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APR 28 2011

FCC Mail Room

April 27, 2010
Via Overnight and E-mail Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

RE: North American Local, LLC, Petition for Forbearance

Dear Ms. Dortch:

Enclosed for filing with the Commission on behalf of North American Local, LLC is an original and four (4) copies of the Petition for Forbearance of North American Local, LLC pursuant to 47 U.S.C. §160(c).

Please acknowledge receipt of this filing by returning, date-stamped, the extra copy of this cover letter in the self-addressed, stamped-envelope that is provided for this purpose.

Should you have any questions regarding this request, kindly address them to my attention at (407) 740-3001 or via email at tforte@tminc.com.

Thank you for your assistance in this matter.

Sincerely,

Thomas Forte

Digitally signed by Thomas Forte
DN: cn=Thomas Forte, o=Technologies Management, Inc., ou, email=tforte@tminc.com, c=US
Date: 2011.04.27 10:35:18 -04'00'

Thomas M. Forte, Consultant to
North American Local, LLC

Enclosure

cc: J. Bellas -North American
Best Copy and Printing
file: North - FCC Petition for Forbearance
tms: FCCx1101

Received & Inspected

APR 28 2011

FCC Mail Room

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WC Docket No. 09-197
Federal-State Joint Board on Universal Service	)	
North American Local, LLC	)	
	)	
Petition for Forbearance of	)	
North American Local, LLC	)	
Pursuant to 47 U.S.C. §160(c)	)	

PETITION FOR FORBEARANCE OF
NORTH AMERICAN LOCAL, LLC

NORTH AMERICAN LOCAL, LLC

Thomas M. Forte
Consultant to North American Local, LLC
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(407) 740-3006

April 27, 2011

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SUMMARY

North American Local, LLC ("North American"), a reseller of commercial mobile radio services ("CMRS"), files the present petition for forbearance to request that the Commission forbear from applying the requirement in Section 214(e)(1)(A) that in order to be able to offer services supported by the Federal Universal Service support mechanisms, a common carrier designated an eligible telecommunications carrier ("ETC") must offer the services over its own facilities or a combination of its own facilities and the facilities of another carrier. North American provides CMRS using the wholesale services and network of Sprint PCS. Furthermore, North American has developed an expertise in providing low-income inner-city residents with wireless services through their retail distribution network. North American will be filing subsequent petitions to be designated an ETC, but in the present petition, is simply seeking forbearance from the own-facilities requirement of Section 214(e)(1)(A), and the Commission's regulations implementing that statutory provision.

Section 10 of the Act requires the Commission to forbear from applying any statutory provision or regulation if the FCC determines that the elimination of enforcement of the provision will benefit the public by satisfying three criteria. First, the Commission must determine that enforcement of the provision is not necessary to ensure that "charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory." Second, the FCC must find that enforcement of the own-facilities provision of the Act is not necessary for the protection of consumers. Third, the Commission must determine that forbearing from enforcing the own-facilities requirement is in the public interest, and, as part of that determination, the FCC must also find that forbearing from enforcing the own-facilities requirement will promote competition.

The FCC has previously found that, in the case of pure CMRS resellers (like North American), the requirements of Section 10 have been met and, with some conditions, the Commission has found that it is required to forbear from enforcing the requirements of Section 214(e)(l)(A). North American, like the previous wireless resellers that have been granted forbearance, will demonstrate that, in conjunction with the conditions the FCC has placed on similar petitions, a grant of North American's forbearance petition meets all of the requirements of Section 10 of the Act.

As a wireless reseller, there are no concerns that requiring provision of services over a carrier's own facilities is necessary to ensure that consumers are not harmed by the reseller's participation in the Lifeline program to support low-income consumers. To the contrary, the nature of resale, combined with the public safety protections and the public fiduciary protections (preventing double recovery) of the conditions the FCC has placed on other forbearance grants, ensures that forbearance from enforcing the own-facilities requirement of Section 214(e)(1)(A) of the Act will promote the public interest and the goals of the Lifeline low-income support mechanism.

Thus, a grant of North American's petition for forbearance will promote the public interest, because the provision in question is not necessary to ensure that consumers are treated fairly, or that competition in the market for telecommunications services to low-income consumers is promoted. Indeed, extending forbearance to North American will promote the goals of the low-income support mechanism by empowering a company that specializes in providing wireless service to "inner-city" residents that are more likely to be Lifeline-eligible.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Wasbington, D.C. 20554

In the Matter of	)	
	)	WC Docket No.____________
Federal-State Joint Board on Universal Service	)	
	)	
NORTH AMERICAN LOCAL, LLC	)	
	)	
	)	
Petition for Forbearance of	)	
NORTH AMERICAN LOCAL, LLC	)	
Pursuant to 47 U.S.C. §160(c)	)	

NORTH AMERICAN LOCAL, LLC
PETITION FOR FORBEARANCE PURSUANT TO 47 U.S.C. §160(c)

North American Local, LLC, ("North American") can potentially offer service to customers throughout the fifty-state and District of Columbia service area[1]. Pursuant to Section 10 of the Communications Act of 1934 ("the Act"), as amended[2], North American is petitioning the FCC to forbear from applying the provision in Section 214(e)(1)(A) of the Act[3] that requires a common carrier designated as an eligible telecommunications carrier ("ETC") to offer service in whole, or in part, over its own facilities in order to be eligible to collect Universal Service support, pursuant to Section 254 (c) of the Act.[4]

[1] North American provides service (i.e., originates and terminates customer calls) in all geographic areas covered by the Sprint PCS networks, including U.S. territories Puerto Rico and the U.S. Virgin Islands. North American, however, only markets to customers in the fifty-states and the District of Columbia covered by the AT&T, Sprint-Nextel, & Verizon wireless networks.

[2] 47 U.S.C. §160.

[3] 47 U.S.C. §214(e)(1)(A).

[4] 47 U.S.C. §254(c). North American understands that it must be designated an ETC by the FCC or the relevant state prior to being able to seek reimbursement from the Lifeline program. The purpose of this Forbearance Petition is to obtain forbearance from the statutory and regulatory barriers preventing pure resellers from seeking reimbursement from the Universal Service Fund in states where North American will subsequently seek ETC certification.

Similarly, North American requests that the Commission forbear from applying any of its rules implementing Section 214(e)(1)(A).[5]

North American requests forbearance from the facilities-based provisions of Section 214(e)(1)(A) of the Act in order to be able to collect Universal Service support under the Lifeline program, which is designed to ensure that all Americans-including the poorest consumers-can afford access to telecommunications services. North American will demonstrate that it satisfies the requirements of Section 10(a) of the Act, and merits the same forbearance the Commission has granted the similarly-situated TracFone[6] and Virgin Mobile[7] to participate in the Universal Service Fund's Lifeline Program.

[5] See. e.g., 47 C.F.R. §§ 54.201(d)(1) and 201(i).

[6] *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45. Order. 20 FCC Rcd 15095 (2005) *("TracFone Forbearance Order").*

[7] *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.S.C. §* 214*(e)(1)(A).* CC Docket No. 96-45, Order. 24 FCC Rcd 3381 (2009) ("*Virgin Mobile Forbearance Order").*

I. INTRODUCTION

North American is a reseller, or mobile virtual network operator ("MVNO"), offering commercial mobile wireless service ("CMRS") throughout the domestic United States (the fifty states plus the District of Columbia). North American will provide USF-supported service through numerous licensed operators of wireless networks. North American obtains service from Sprint PCS ("Wireless Network Operators"). North American's arrangement with its Wireless Network Operators enables it to offer services wherever these vendors offer service. North American's management team has over forty years of combined telecommunications experience with much of their expertise centered on providing local and long distance services to residents of rural and urban centers, and in particular to lower-income individuals and families as well as senior citizens. The management also has extensive experience supporting the engineering, provisioning, marketing, fulfillment and customer service infrastructures of major facilities-based telecommunications firms. While still small in comparison with other national MVNOs such as TracFone or Virgin Mobile, North American is a profitable firm with demonstrated integrity, especially with regard to serving low-income inner-city markets.

North American's marketing and distribution model is focused directly towards low-income communities and neighborhoods. North American sells its products to inner-city retailers, groceries, convenient stores, hair salons, clothing stores, and the like. Most of the people in these communities do not shop at "Big-Box" retail stores or on-line as they do not have access. Additionally, North American provides airtime terminals at these locations for its customers to purchase additional minutes for their phone plans. North American's "main street" approach and "grass-roots" sales and distribution network reaches the most disconnected low-income community in the states that it serves. While North American does not confine its service offerings to the inner-cities, its focus on this market segment is directly relevant to its request for forbearance and its desire to be able to participate in the Lifeline program. By providing service to this market segment, North American will ensure that many Americans who cannot afford or access the services provided by other wireless providers can still enjoy the benefits of wireless telecommunications.

North American does not require customers to sign long-term contracts nor does it impose early termination fees. North American also provides a wide choice of handsets. North American can provide all of the supported services required by the Commission's rules, including emergency service and toll limitation for low income customers.[8] Similarly, but for the facilities-based requirement of Section 214(e)(1)(A), North American meets the other eligibility requirement of Section 214(e)(1)(B), in that North American advertises the availability of its services using media of general distribution.[9]

II. COMPLIANCE WITH FCC FORBEARANCE FILING RULES

On June 29, 2009, the FCC released new rules governing the filing of Forbearance Petitions pursuant to Section 10 of the Act.[10] Significantly, the Order adopting the new rules indicated that simple, non-complex, Forbearance Petitions that clearly meet the statutory forbearance criteria (Petitions such as the present Petition being filed here by North American) should be able to be granted within six months of their filing.[11]

In the present Petition, North American has clearly met all relevant rules. Section 1.55 (a) and (b) essentially require the Petitioner to establish a clear and convincing case, supported by facts, argument, and precedent, upon filing.[12] Additionally, Section 1.55(c) requires that the Petitioner disclose any similar requests for relief that the Petitioner has filed, or has previously supported. The rule goes on to explain that "alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought."[13] To be clear, North American, has not previously requested, supported, or opposed the relief sought in this Petition in any other Commission proceeding.

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[8] 47 C.F.R. §54.101(a)(l)-(a)(9).
[9] 47 U.S.C. § 214(e)(1)(B).
[10] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended.* Report and Order. WC Docket No. 07-267, (rel. June 29, 2009). New Rules at Appendix B. *("New Forbearance Petition Rules")*
[11] *Id.* at ¶ 31.
[12] *Id.* at Appendix B.
[13] *New Forbearance Petition Rules* at Appendix B.

Finally, Section 1.55(e) requires Petitioners to 1) provide a short explanation of the relief sought, 2) a full statement of the Petitioner's *prima facie* case for relief, and 3) include Appendices that list: the scope of relief sought, and any evidence, market analyses, declarations, or other data upon which the Petitioner intends to rely in order to demonstrate that a grant of forbearance is justified under Section 10 of the Act. In the present case, North American has satisfied all of the Commission's requirements within the four corners of this petition. The only remaining requirement for North American to comply with the Commission's new requirements is North American's inclusion of an Appendix A, pursuant to proposed new rule 1.55(e)(3)(A), which requires future petitioners to include an Appendix that lists the scope of relief sought as required in § 1.55(a).

III. RELEVANT STATUTES AND RULES

North American is seeking forbearance from the statutory provisions, and the rules of the Commission, that prevent it from receiving Universal Service support under the Lifeline program, the purpose of which is to provide support to low income consumers of telephone service. The Commission's Lifeline program offers low-income consumers monthly support of up to $10.00 off the cost of telephone service.[14] Customers in tribal lands are eligible for up to $25.00 in monthly support for telephone service under the Lifeline program.[15]

As explained earlier, the Act limits participation in the high-cost or low-income reimbursement programs provided for by Section 254 to carriers designated as ETCs by either the state commission or the FCC.[16] The Act further requires that ETCs must also offer and advertise the services supported by the

[14] 47 C.F.R. §54.401(a)(2)
[15] 47 C.F.R. §54.405(a)(4).
[16] 47 U.S.C. §214(e).

USF mechanism throughout the relevant service area.[17] Finally, the Act requires that only carriers providing service over their own facilities, or a combination of their own facilities and resale of another carrier's facilities, can receive reimbursement under the Commission's high-cost or low-income reimbursement mechanisms. [18]

The Commission had previously declined to allow pure resellers to collect Universal Service subsidies under the assumption that the underlying wholesale carrier would be a wireline carrier. In situations where the wholesale carrier is an incumbent LEC, the reseller would get the benefit of the subsidy through the resale discount provided for by Section 251(c)(4). In its recent grants of forbearance in the TracFone and Virgin Mobile orders, however, the Commission recognized that licensed CMRS carriers are not subject to the Section 251(c)(4) resale requirement, so the traditional concerns about "double recovery" of Lifeline subsidies by resellers are not present. The Commission also concluded that its previous assessment did not contemplate the current high levels of wireless substitution and the trend toward higher levels of wireless substitution. [19]

IV. THE STATUTORY FORBEARANCE STANDARD

The Commission is required to forbear from applying any regulation or provision of the Act with respect to any service in any geographic area where the Commission determines that:

1) The regulation or provision is not necessary to ensure that the market performance for the relevant service remains just, reasonable, and not unfairly discriminatory;
2) Enforcement of the regulation or provision is not necessary for the protection of consumers; and
3) Forbearance from applying the statutory or regulatory provision is consistent with the public interest. [20]

The FCC has interpreted this statutory standard in two petitions that are nearly identical to the present petition and found that, with appropriate conditions, which North American is prepared to accept, these standards have been satisfied. The public interest will be best served if North American, like TracFone and Virgin Mobile, receives the same forbearance from the statutory provisions and FCC regulations that prevent it from being able to better serve low-income consumers.

[17] 47 U.S.C. §214(e)(l)(B).
[18] 47 U.S.C. §214(e)(1)(A).
[19] See, e.g., *Virgin Mobile Forbearance Order,* 24 FCC Rcd 3381 at 3384-3385, ¶ 7.
[20] 47 U.S.C. §160(a).

North American wishes to make perfectly clear that its request in this petition is not materially different from the forbearance requests the Commission has previously granted in its TracFone and Virgin Mobile Orders. Moreover, North American is prepared, upon grant of this petition, to submit a compliance plan to the Commission explaining how it will comply with the same conditions that have qualified the forbearance grants to TracFone and Virgin Mobile.

To summarize, the conditions imposed by the Commission in its recent order granting the Virgin Mobile forbearance petition required Virgin Mobile to:

(a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;

(b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;

(c) comply with conditions (a) and (b) as of the date it provides Lifeline service;

(d) obtain a certification from each PSAP where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAPs service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements;

(e) require its customers to self-certify, at time of service activation and annually thereafter, that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and

(f) establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address. [21]

V. CINTEX SATISFIES THE REQUIREMENTS OF SECTION 10

North American, as a petitioner and a service provider to the Lifeline-eligible community, is a well qualified carrier and petitioner. Accordingly, North American's instant request compares favorably with the petitions of TracFone and Virgin Mobile, and therefore, meets all of the requirements of

[21] *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3381 at 3387. ¶ 12.

Section 10 that require the Commission to forbear from applying the own-facilities requirement of Section 214(e)(l)(A). In other words, the application and enforcement of Section 214(e)(l)(A), is not necessary to ensure that North American continues to provide services at fair prices, and on just, reasonable, and fair terms. Moreover, consumers will not be harmed in any way, and the public interest will be promoted, through a Commission's grant of this Forbearance Petition.[22] Indeed, *because* the Commission has found that low-income consumers would benefit from grants of the TracFone and Virgin Mobile petitions, consumers, writ large, will further benefit from a grant of North American's petition because North American focuses on a low-income population.

North American Satisfies Section 10(a)(1): *Application, and/or Enforcement of Section 214(e)(1)(A)* is *not necessary to ensure that the prices and terms in the market for wireless service remain just, reasonable, and not unfairly discriminatory.* The Commission has previously found, in both the TracFone and Virgin Mobile Forbearance Orders that "the own-facilities requirement [of Section 214(e)(1)(A)] is not necessary to ensure that [the pure wireless reseller's] charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only."[23] Additionally, North American's underlying wholesale carriers are not subject to the Section 251(c)(4) resale requirement, so the traditional concerns about "double recovery" of Lifeline subsidies by resellers are not present. The Commission has also explained recently that there is even further assurance that Section 10(a)(l) is satisfied in the present case, because a "reseller, is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory. [24]

North American Satisfies Section 10(a)(2): *Application/Enforcement of Section 214(e)(1)(A) is Not Necessary for the Protection of Consumers.* The Commission has determined that the own-facilities

[22] See 47 U.S.C. §§ (a)(1)-(a)(3).
[23] See, e.g., *Virgin Mobile Forbearance Order,* 3389, ¶ 18 (internal citations to TracFone Order omitted).
[24] *Virgin Mobile Forbearance Order,* 3389, ¶ 18 (internal citations to TracFone Order omitted).

requirement is not necessary to protect consumers.[25] In fact, a forbearance grant, which will allow North American to participate in the Lifeline program once it is designated an ETC, will actually increase the number of carriers in any given market eligible to serve Lifeline-eligible consumers. Consumers not only have access to at least the incumbent LEC, but, in many cases one or more wireless providers including wireless resellers TracFone and Virgin Mobile. Finally, consumers, are protected from any arguable public safety concerns (access to emergency services), and from concerns that increasing participation in the Lifeline program will artificially inflate the size of the Fund, by the conditions that the FCC has placed on its forbearance grants in both the TracFone and Virgin Mobile Forbearance Orders.[26] Thus, given the nature of the resale business, and the additional conditions required in both previous *Forbearance Orders,* and North American's willingness to abide by these same conditions, there seems to be no question that North American's request for forbearance meets the requirements of Section 10(a)(2) of the Act.[27]

North American Satisfies Section 10(a)(3): *Forbearance from the Applying the Facilities Requirement is Consistent with the Public Interest.* The Commission has concluded in both the TracFone and Virgin Mobile Forbearance Orders that it is consistent with the public interest for the FCC to forbear from applying the own-facilities requirement to wireless resellers seeking to qualify for the Universal Service Lifeline program. One of the requirements the FCC must consider in order to determine that the requirements of Section 10(a)(3) have been satisfied is that the Commission must weigh the competitive effect of granting forbearance, as required by Section 10(b).[28] Section 10(b) requires the Commission, in weighing the public interest effects of a forbearance grant shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.

[25] *Id.* at 3390 ¶ 21.
[26] *Id.* at 3390-3393, ¶¶ 21-28. See also, *TracFone Forbearance Order.* 20 FCC Rcd at 15104, ¶ 19.
[27] 47 U.S.C. § 160(a)(2).
[28] 47 U.S.C. § 160(b).

As noted in the discussion of Section 10(a)(2), the public interest analysis under Sections 10(a)(3) and 10(b) is pretty straightforward in the case of North American's present petition. If North American's petition is granted, Lifeline-eligible consumers in the wireless service territories served by North American will have one more carrier that has an incentive to aggressively compete for their business. Thus, it is not surprising that, in its most recent analysis of the requirements of Section 10(a)(3) in a similar petition, the FCC concluded, "we find that requiring Virgin Mobile, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."[29]

There is yet another reason for the FCC to look favorably on North American's petition under Section 10(a)(3). As noted previously, North American's business focus complements the business strategies of most other telecommunications carriers in the market, including the wireless resellers for which the Commission has already granted forbearance from the own-facilities requirement. Grant of North American's petition will allow the FCC to ensure that more Lifeline-eligible Americans get the assistance that the Act was intended to provide. North American previously explained that consumers in its target market have a higher rate of Lifeline eligibility than the average American.

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[29] *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3381 at 3393, ¶ 29.

* * *

North American specializes in serving a market segment with a significant number of Americans who are more likely to be at risk of losing connectivity. By empowering the Petitioner, North American Local, LLC, with the ability to participate in the programs designed to help low-income consumers, the FCC will unequivocally promote the public interest in the most common sense way possible, at the most important time possible. Thus, for the reasons described above, North American Local, LLC requests that the Commission grant this forbearance petition with minimal delay.

Respectfully submitted,

Thomas M. Forte
Consultant to North American Local, LLC
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2600 Maitland Center Parkway, Suite 300
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APPENDIX A
SCOPE OF RELIEF REQUESTED

North American Local, LLC is requesting that the FCC forbear from applying the provision in section 214(e)(1)(A) of the Act that requires a common carrier designated as an eligible telecommunications carrier to offer service in whole, or in part, over its own facilities in order to be eligible to collect Universal Service support, pursuant to Section 254(c) of the Act. Similarly North American Local, LLC requests the Commission to forbear from applying any of its rules implementing Section 214(e)(1)(A).

North American Local, LLC requests forbearance from the facilities-based provisions of Section 214(e)(1)(A) of the Act in order to be able to collect Universal Service support under the Lifeline program, which is designed to ensure that low-income Americans can afford access to telecommunications services. North American Local, LLC is seeking the same forbearance the Commission has granted the similarly-situated TracFone[30] and Virgin Mobile[31] to participate in the Universal Service Fund's Lifeline Program.

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[30] *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and* 47 *C.F.R. § 54.201(i),* CC Docket No. 96-45. Order. 20 FCC Rcd 15095 (2005).
[31] *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.S.C. § 214(e)(1)(A).* CC Docket No. 96-45, Order. 24 FCC Rcd 3381 (2009).